pending, commonly owned, patent application 06/223,108 ("the '108 application"). Claims 37-38 and 42-52 have been provisionally rejected under the doctrine of obviousness-type double patenting as unpatentable over the '108 application in view of United States Patent 4,530,901. The Examiner has finally rejected claims 37, 42-44, 46-47 and 49 under 35 U.S.C. § 102(a) as anticipated by Nagata et al., "Synthesis in E. coli of a Polypeptide with Human Leukocyte Interferon Activity," Nature, 284, pp. 316-320 (1980) ("Nagata").

Formal Drawings

Applicant has noted the Examiner's comments relating to formal drawings. Applicant will submit formal drawings upon notice of allowance of the pending claims.

Provisional Rejections For Obviousness-Type Double Patenting

The Examiner has repeated his provisional rejection of claims 37-55 under the judicially created doctrine of obviousness-type double patenting as unpatentable over various claims of the '108 application. The Examiner has provisionally rejected claims 39 and 53 as unpatentable over claim 5 of the '108 application, claims 40 and 54 as unpatentable over claim 6 of that application, and claims 41 and 55 as unpatentable over claim 7 of that application. Claims 37, 38 and 42-52 stand provisionally rejected as unpatentable over claims 5-7, 43 and 44 of the '108 application in view of claims 1-18 of United States Patent 4,530,901.

Applicant requests that these double-patenting rejections be held in abeyance, given that prosecution of the '108 application has been suspended pending a final judgment in Interference No. 101,601. Particularly, applicant requests this action because the above-identified application is a pre-GATT application. Therefore, it is entitled to a 17-year term from date of grant. To now decide in which application particular claims are patentable would be potentially prejudicial to applicant's rights.

Rejection Under 35 U.S.C. § 102(a)

The Examiner has finally rejected claims 37, 42-44, 46-47 and 49 under 35 U.S.C. § 102(a) as anticipated by Nagata. According to the Examiner, applicant's previous arguments and the Declaration of Charles Weissmann ("the Weissmann Declaration") fail to overcome the outstanding rejection because the signature on the Weissmann Declaration is a xerographic copy.

In a teleconference on October 9, 1997, the Examiner discussed with applicant's attorney, Jennifer Weissman, whether applicant need provide an original copy of the Weissmann Declaration in this application. The Examiner indicated that submission of a xerographic copy of a declaration is acceptable where the applications in which the original declaration and the xerographic copy are filed are both divisionals of the same parent application.

Here, the Weissmann Declaration was filed on March 3, 1997 in co-pending patent application 08/475,869, filed June 7, 1995. The '869 application, like the present application, is a divisional of the '108 application, filed January 7, 1981. When

presented with these facts, the Examiner stated that applicant could submit a xerographic copy of the Weissmann Declaration in the present application.

In view of the above, applicant requests reconsideration of applicant's previous arguments in response to the outstanding rejection. However, if the Examiner would prefer submission of an original copy of the Weissmann Declaration, applicant will be happy to provide one.

CONCLUSION

For the reasons provided above, applicant requests reconsideration of the pending claims.

Respectfully submitted,

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I Hereby Certify that this Correspondence is being Deposited with the U.S. Postal Service as First Class Mail in an Envelope Addressed to: ASSISTANT COMMISSIONER FOR PATENTS WASHINGTON D.C., 20231, on November 13, 1997

Thomas Quinones
Name of Person Signing

Signature of Person Signing